Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
2018 Biennial Review of Telecommunications Regulations	)	WT Docket No. 18-374
	)	WC Docket No. 18-378

COMMENTS OF AT&T SERVICES, INC.

I. INTRODUCTION AND SUMMARY

AT&T Services, Inc., on behalf of its affiliates ("AT&T") respectfully submits these reply comments in response to the Public Notice issued by Commission Bureaus and Offices seeking comment on what rules should be modified or repealed as part of the 2018 biennial review.[1] As an initial matter, AT&T notes its support for the proposals raised by USTelecom in its initial comments filed in this proceeding.[2] AT&T also believes that the Wireless Telecommunications Bureau can take this opportunity to eliminate regulations that have been rendered unnecessary by technological progress, as well as to modernize its online filing systems and databases to more accurately reflect rules currently in place.

First, the Bureau should discontinue its "enhanced factor" evaluation of transactions involving spectrum aggregation below 1 GHz. While AT&T submits that this heightened

---

1 *FCC Bureaus and Offices Seek Public Comment In 2018 Biennial Review of Telecommunications Regulations,* Public Notice, DA 18-1260 (Dec. 17, 2018).

2 Comments of USTelecom – The Broadband Association, WC Docket No. 18-378 (Feb. 8, 2019).

regulatory scrutiny of certain spectrum transactions was never necessary, it makes even less sense considering today's competitive landscape. As the U.S. wireless industry focuses its efforts on 5G deployment, the definitions of "low-band," "mid-band," and "high-band" spectrum are shifting, as are the roles played by various spectrum bands in carriers' wireless deployments. The Commission has recently – and correctly – taken the position that band-specific aggregation limits are unnecessary and should extend this treatment to spectrum below 1 GHz.

AT&T also takes this opportunity to note longstanding disconnects between the Commission's rules as written and the day-to-day functioning of the online application systems that facilitate assignments, transfers, and leases of wireless spectrum. While changes to applicable FCC rules may be necessary, the Commission can greatly enhance the public interest simply by making technology changes to bring these forms in line with the rules that already govern them. Indeed, seeing as FCC Forms 603 and 608 were first adopted more than a decade ago, it may be appropriate for the Commission to initiate a proceeding to more broadly overhaul and streamline these essential online tools.

II. TECHNOLOGY EVOLUTIONS COMPEL IN FAVOR OF DISCONTINUING THE "ENHANCED FACTOR" EVALUATION OF TRANSACTIONS INVOLVING SPECTRUM BELOW 1 GHZ.

AT&T agrees with Verizon that the Commission's "enhanced factor" review of certain transactions involving spectrum below 1 GHz was unnecessary when adopted in 2014 and makes even less sense now that evolutions in technology have taken place.[3] In recent years, the Commission has rejected band-specific spectrum holding limits, and it should adopt this same

[3] Verizon's Comments on the 2018 Biennial Review of Telecommunications Regulations, IB Docket No. 18-377, ET Docket No. 18-370, WT Docket No. 18-374, WC Docket No. 18-378, at 4-5 (filed Feb. 8, 2019) ("Verizon Comments").

approach for spectrum below 1 GHz. Since the Commission adopted this policy in 2014, it has made available significant amounts of new spectrum both above and below 1 GHz.[4] The Commission has also shifted its definition of low-, mid-, and high-band spectrum over the years as the technological capability of higher and higher frequencies has been unlocked.[5] Furthermore, the Commission has acknowledged the important role that mid- and high-band spectrum will play in the provision of next-generation services.

To support 5G, carriers will rely upon a variety of different spectrum bands, with each carrier choosing its own configuration that it believes can best deliver 5G services to its customers. Just as the Commission properly concluded that band-specific spectrum aggregation thresholds were not appropriate in millimeter wave spectrum,[6] it should find that that the "enhanced factor" review for certain transactions below 1 GHz was never necessary and that the time has come to eliminate it.

---

[4] Specifically, the Commission has identified, allocated, proposed/developed service rules for, and/or auctioned the 600 MHz band, AWS-3 band, 2.5 GHz band, 3.5 GHz band, C-band, and various bands above 24 GHz.

[5] For example, ten years ago the Commission was focused primarily on spectrum below 3.7 GHz to support wireless broadband services. Today, 3.7 GHz is commonly expressed as the demarcation point between "low-band" and "mid-band" spectrum.

[6] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Order on Reconsideration, 32 FCC Rcd 10988, ¶ 162 (2017).

III. THE COMMISSION SHOULD RESOLVE DISCREPANCIES BETWEEN ITS RULES AND FORMS GOVERNING LICENSE ASSIGNMENTS, TRANSFERS, AND LEASES.

A. License Assignments and Spectrum Leases Having No Competitive Impact Should Qualify for Immediate Processing.

One area highlighted by Verizon in its comments is that many applications for assignments, transfers, and/or leases of wireless licenses that should receive immediate processing under the Commission's rules currently do not.[7] AT&T agrees and believes that the Commission should consider changes to its rules and/or forms to ensure that applications that do not require substantive review by the Commission in fact receive immediate processing. In particular, there is no basis for prolonged review of intra-market spectrum swaps that have no impact on competition.

The Commission's rules governing the assignment, transfer, and/or lease of wireless licenses provide that applications meeting certain criteria will be eligible for immediate processing by the Commission. These applications are automatically granted by the Universal Licensing System ("ULS") in the first overnight processing round after completion, enabling the parties to proceed with the transaction or lease the next day.[8] The Commission's immediate approval procedures promote the public interest by ensuring that transactions having no impact on competition can be granted as expeditiously as possible. All other applications are "offlined" by the ULS and cannot be granted without the intervention of Commission staff.

Although AT&T supports the Commission's immediate approval procedures, the Commission's online forms do not currently comport with the rules. As a result, many

---

7 Verizon Comments at 5-7.

8 *See, e.g.,* 47 C.F.R. § 1.948(j)(2)(ii).

applications that should qualify for immediate processing under the rules are nonetheless offlined. Because of this disconnect between the rules and the day-to-day function of ULS, there is often great uncertainty as to whether an application will receive immediate processing, even though it qualifies for this treatment under the rules. These unwritten reasons for disqualification from immediate processing include but are not limited to: related applications have been filed with other bureaus/offices, not all licenses associated with the application have been fully constructed, or some aspect of the application is on the Commission's internal "alert list."[9] This process does not serve the interests of transparency in government. The Commission should apply its rules as written, and to that end it should update Forms 603 and 608 to ensure that all applications that comply with the immediate processing requirements in fact receive immediate processing. If there is a concern with that approach, the Commission should spell out that concern in a rulemaking proceeding and address it through a rule amendment.

Furthermore, AT&T agrees with Verizon that there is no basis for prolonged review of intra-market spectrum swaps that create no increases in either party's spectrum holdings or new geographic overlaps.[10] These "one-for-one" swaps, which are increasingly common as parties seek to deploy wider channels to support mobile broadband services, represent a textbook example of transactions that should receive immediate processing. As Verizon notes, these transactions "do not result in changes to a provider's net depth of ownership in a particular

---

[9] If some component of an application implicates the Alert List, the application will be "offlined for Alert List Review." AT&T is not aware of any public explanation of the Alert List, who is on it, or how parties or licenses are added or removed.

[10] Verizon Comments at 5.

market" and are "presumptively competitive."[11] Currently these applications do not qualify for immediate processing because a literal reading of Form 603's "competition" questions requires a "yes" answer that causes the application to be offlined and subject to general approval procedures.[12] The Commission can resolve this by amending Form 603 to make clear that only applications creating *new* spectrum overlaps or resulting in a *net increase* in mobile spectrum holdings require a "yes" answer to the "competition" questions. Alternatively, it could add a question to Form 603 that would serve to flag transactions of this nature and ensure that they receive immediate processing.

B. The Commission Should Update Form 608 to Bring It in Line with the Commission's Rules

When the Commission adopted its rules regarding spectrum leasing, it created a new form, Form 608, to permit lessors and lessees to perform various functions permitted or required by its new rules. However, there has long been a disconnect between activities envisioned by the Commission's rules and those permitted by Form 608 as currently written. The Commission has acknowledged these disconnects but has yet to resolve them. For more than a decade, spectrum lessors and lessees have employed unnecessarily burdensome, time-consuming workarounds to compensate for certain technical shortcomings of the electronic Form 608. Without needing to change or eliminate any rules, the Wireless Bureau can greatly promote the public interest by bringing Form 608 in line with the rules as currently written.

The Commission's rules governing spectrum leasing lay out a variety of filing requirements for prospective lessors/lessees and sublessors/sublessees. Specifically, the

---

11 *Id.*

12 *See* FCC Form 603, Questions 13-14.

Commission in its rules envisions that parties will be able to assign a spectrum leasing arrangement,[13] convert a short term lease into a long term lease,[14] and enter into subleases.[15] The Commission's rules also require lessees of spectrum manager leases to comply with the Communications Act and Commission rules, including mandatory compliance filings.[16] However, since the adoption of Form 608 it has been impossible for parties to make these filings in the manner contemplated by the Commission when the leasing rules were adopted.

In a 2006 Public Notice, the Commission acknowledged that Form 608 lacked the capabilities needed for lessors and lessees to make certain required filings, and prescribed workarounds.[17] These workarounds are generally inefficient and require multiple filings where a single filing theoretically should suffice, or require manual filing when electronic filing would be much simpler for all parties involved. For example, the rules provide that the parties to a lease can convert a short-term *de facto* transfer lease to a long-term *de facto* transfer lease.[18] However, the only way to do that is to file an application for a new long-term lease (even though the lease in question is not "new") and then, when the new lease application is granted, cancel the old

---

13 47 C.F.R. § 1.9020(i); 47 C.F.R. § 1.9030(j); 47 C.F.R. § 1.9035(j).

14 47 C.F.R. § 1.9035(i).

15 47 C.F.R. § 1.9020(l); 47 C.F.R. § 1.9030(k).

16 47 C.F.R. § 1.9020(c)(4).

17 *The Wireless Telecommunications Bureau Announces FCC Form 608 is Available for Filing Spectrum Leasing Notifications and Applications and Private Commons Arrangements*, Public Notice, DA 06-1723 (Aug. 28, 2006) ("Form 608 Public Notice").

18 47 C.F.R. § 1.9035(i).

lease.[19] Not only does this workaround involve unnecessary filings,[20] but it also undermines the accuracy and clarity of the Commission's records because the lease's administrative and procedural history is split between two or more Lease IDs. After thirteen years of employing interim workarounds, the time has come to update Form 608 to permit the conversion of a short-term lease to a long-term lease, electronic filing of sublease applications, assignments of leasing arrangements, and any other function that may be required or contemplated by the rules but missing from Form 608.

Furthermore, there is no basis for the Commission to prohibit spectrum manager lessees from making filings that do not require the consent, signature, or other involvement of the lessor. Currently, ULS does not permit spectrum manager lessees to make *any* electronic filings related to their leases – not even to correct a typo in the lessee's phone number or update an address. Instead, the licensee must make these filings on behalf of the spectrum manager lessee, even though the lessee could face regulatory consequences if required filings are not submitted in a timely manner by the licensee.[21] This policy is premised on the Commission's position that

---

[19] Form 608 Public Notice at 3 ("The Commission's rules provide for a short-term *de facto* transfer lease to be converted to a long-term *de facto* transfer lease provided that the rules and policies for a long-term de facto transfer lease are met. A filing purpose of "Conversion of a Short-Term *de facto* Transfer Lease" does not exist on the Form 608. In order to convert a short-term *de facto* transfer lease to a long-term *de facto* transfer lease, a new lease filing must be submitted. If the new lease filing is granted, then the short-term *de facto* transfer lease should be cancelled by the licensee.").

[20] Presumably a single filing could effectuate the conversion of a short-term lease to a long-term lease, whereas the workaround requires two filings and – in many cases – an unnecessary request for waiver of the Commission's rules to permit the existing Lease ID to be "canceled" more than 10 days after the effective cancellation date.

[21] 47 C.F.R. § 1.9020(c)(4) ("[T]he spectrum lessee is independently accountable to the Commission for complying with the Communications Act and Commission policies and rules,

permitting lessees to unilaterally make compliance filings would shift *de facto* control to the lessee in violation of the notion of a spectrum manager lease. Permitting spectrum manager lessees to make these ministerial, necessary compliance filings would not result in *de jure* or *de facto* control of the leased spectrum passing to the lessee. Indeed, such filings relate only to administrative aspects of the lease itself, not the underlying license. AT&T understands that "exercising *de facto* control requires the licensee to maintain an active, ongoing oversight role to ensure that the spectrum lessee complies with the Communications Act and all applicable Commission policies and rules."[22] However, the Commission's implementation of this principle through ULS creates a potential situation where a spectrum manager lessor could *prevent* the lessee from complying with applicable laws and/or rules, or impose unnecessary delays on compliance processes. At a minimum, the Commission should permit spectrum manager lessees to file administrative updates to leases (to update or correct contact information), and notifications of *pro forma* transfers of control affecting the lessee.[23] Alternatively, the Commission could amend Rule 1.9020 to make clear that spectrum manager lessors are required to act in good faith to assist in these filings, and that lessees will not be responsible for any rule violations that arise from the lessor's failure to cooperate in good faith and submit required filings in a timely manner.

---

including those that apply directly to the spectrum lessee as a result of its own status as a service provider.").

[22] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, ¶ 12 (2003).

[23] AT&T is not suggesting that spectrum manager lessees should be permitted to unilaterally submit Form 608 in the event of a substantial assignment or transfer of the lessee, or in the event of a *pro forma* assignment of the lease where the lessee's identity is changing.

C. The Commission Should Consider a Proceeding to Evaluate its Electronic Forms More Broadly

In these reply comments, AT&T has highlighted not only changes that should be made to the rules, but also ways in which the rules as written cannot be fully implemented using existing Commission technology. The Commission periodically seeks comment on suggested changes or alterations to its data collection requirements, including its online forms. Neither Form 603 nor Form 608 has undergone a significant revision in more than a decade. While AT&T has highlighted certain changes that are necessary to bring these forms in line with current rules, AT&T suggests that the Commission seek comment more broadly on ways the Commission could update these forms to be more efficient.

IV. CONCLUSION

As explained above, there are minor adjustments the FCC can make to its rules and policies to expedite wireless transactions that serve the public interest. In the short term, there are small changes the Commission can make to bring its online forms in line with the rules they are meant to implement. In the longer term, the FCC should initiate a more broad-ranging proceeding to enhance Forms 603 and 608 to support spectrum transactions in a 5G world.

Respectfully Submitted,

/s/ Jessica B. Lyons

Jessica B. Lyons
Michael P. Goggin
Gary L. Phillips
David L. Lawson
AT&T Services, Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-2100
Its Attorneys

March 11, 2019